

## THE CHIEF COURT

12 CW 2600

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

VERIFIED COMPLAINT

Plaintiff,

**VERIFIED COMPLAINT**

— V. —

12 Civ.

A 10<sup>th</sup> CENTURY CAMBODIAN SANDSTONE SCULPTURE, CURRENTLY LOCATED AT SOTHEBY'S IN NEW YORK, NEW YORK.

Defendant in rem.

2

Plaintiff United States of America, by its attorney, Preet Bharara, United States Attorney for the Southern District of New York, for its verified complaint alleges, upon information and belief, as follows:

## I. NATURE OF THE ACTION

1. This action is brought by the United States of America seeking forfeiture of all right, title and interest in a sandstone statue, circa 10th Century A.D., which was illicitly removed from the Prasat Chen Temple at the historic and archeological site of Koh Ker, Preah Vihear Province, Cambodia (the "Defendant in rem"). A photograph of the Defendant in rem

is attached hereto as Exhibit A. The Defendant in rem is currently in the possession of Sotheby's in New York, New York.

2. The Defendant in rem is subject to forfeiture pursuant to 19 U.S.C. § 1595a(c) because there is probable cause to believe that the Defendant in rem is stolen property introduced into the United States contrary to law. The Defendant in rem is also subject to forfeiture pursuant to 18 U.S.C. § 545 because there is probable cause to believe that the Defendant in rem is merchandise which has knowingly been brought into the United States contrary to law. The Defendant in rem is further subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that the Defendant in rem is property, real or personal, which constitutes or is derived from proceeds traceable to a violation of 18 U.S.C. § 2314 and/or 18 U.S.C. § 2315.

### II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1345 and 1355.

4. Venue is proper under 28 U.S.C. § 1395 because the Defendant in rem is located in the Southern District of New York. Venue is also proper under 28 U.S.C. § 1355(b)(1)(A) because acts and omissions giving rise to the forfeiture occurred in the Southern District of New York.

### III. FACTUAL BACKGROUND

#### Ancient History of Koh Ker and the Defendant in Rem

5. Koh Ker, known in ancient times as Chok Garygar, was the capital of the ancient Khmer Empire from 928 to 944 A.D. It is located in the Kulen district of northern Cambodia, approximately seventy-five miles northeast of the town of Siem Riep. With the exception of this short period of time from 928 to 944 A.D., the Angkor region served as the capital of the Khmer Empire from in or about the 9<sup>th</sup> Century through the 15<sup>th</sup> Century.

6. The Koh Ker site is of great significance from a religious, historical, and artistic perspective. Founded and built over a period of two decades by Jayavarman IV, a king of tremendous wealth and power, the Koh Ker site is a vast complex of sacred monuments made of brick, laterite, or sandstone, including, among other things, dozens of temples and sanctuaries, a huge terraced pyramid-temple, and towers.

7. The architecture and statuary of Koh Ker were executed, under the demands of Jayavarman IV, by the finest and most experienced artisans, sculptors, and craftsmen of the time. Koh Ker statuary, including the Defendant in rem, was of a kind and proportion that had not been previously attempted in Cambodia. Many of the statues were huge, often shown in movement, and were free-standing or in high-relief, rather than simply in bas-relief.

The Statues of Prasat Chen

8. One of the temples at Koh Ker is a three-peaked structure made of laterite and sandstone called Prasat Chen. An inscription on one of the doors to Prasat Chen states that the temple was dedicated to the major Hindu god Vishnu, who is thought to be the preserver of the universe.

9. Prasat Chen has been severely damaged, the victim of rampant looting. Upon information and belief, there were two large sandstone statues in the western pavilion of Prasat Chen, the Duryodhana and Bhima. These two statues once stood face to face, depicted at the moment of preparation for their epic battle, as chronicled in *The Bhagavad Gita*. The site of this sculptural group is now surrounded by rubble from the building and only the pedestals on which they stood remain.

10. In or about 2007, a stone conservator examined the two pedestals near the entry to the western pavilion of Prasat Chen, the pedestals of the Duryodhana and the Bhima. Attached to both pedestals are feet, indicating that the statues had been broken off at the ankles. The conservator examined the feet and attempted to identify the Khmer statues which had stood on the pedestals. The conservator engaged in archival and bibliographic research and located in a book a photograph of a Khmer statue at a museum in the United States ("the Museum Statue") which appeared to match the Bhima's feet. The conservator digitally

compared photographs of the Museum Statue to the Bhima's feet and as a preliminary matter concluded that they were a match. The conservator recorded his research and findings in a May 2007 report entitled, "Report concerning the Statuary of Prasat Chen in Koh Ker."

11. This research was repeated and the results confirmed in 2009 by Eric Bourdonneau ("Bourdonneau"), a lecturer in archaeology at the Ecole Francaise d'Extreme Orient (The French School for Far Eastern Studies) ("EFEQ").<sup>1</sup> Bourdonneau examined the feet on the Bhima pedestal, took field measurements of the feet, reviewed photographs of the Museum Statue and concluded that the sandstone feet of the Bhima match the Museum Statue.

12. Bourdonneau also examined the feet of the Duryodhana pedestal, took field measurements of the feet, examined a photograph of the Defendant in rem, and compared the breakage profiles of the Defendant in rem with the feet on the Duryodhana pedestal. Bourdonneau concluded that the Defendant in rem is the missing Duryodhana from the western pavilion of Prasat Chen.

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<sup>1</sup> The EFEQ was founded in 1903 and, among other things, conducts research on the classic civilizations of Asia, serves as a base for leading scholars in Asian Studies, and maintains numerous libraries.

13. The Duryodhana is of extraordinary value as a piece of the cultural heritage of the Cambodian people. A spectacular piece and unique in so many ways, it is a triumph of creativity and innovation. It represents a unique moment in the religious and artistic history of ancient Cambodia, when the great themes of the Indian epic texts, such as *The Bhagavad Gita*, became integrated into the temple space, and were represented not simply in bas-relief, but rather in full round. Shown precisely at the moment where he leaps in to the air, the Duryodhana is testament to the skill of the ancient sculptors, who took an extraordinary risk in giving the illusion of a being in movement and suspension.

#### Looting of Koh Ker

14. In the mid-to-late 1960's, Cambodia was plunged into political upheaval and civil war. The conflict pitted the Khmer Rouge and their allies, the North Vietnamese and the Viet Cong, against the government forces of Cambodia, who were supported by the United States and South Vietnam. In 1975, the government forces of Cambodia were defeated by the Khmer Rouge, and the Khmer Rouge controlled Cambodia between 1975 and 1979. Millions of Cambodian citizens were killed during the period of Khmer Rouge control. During these times of extreme unrest, the Koh Ker site suffered serious damage and widespread looting.

15. Bourdonneau has advised that he believes that the Defendant in rem was looted from Prasat Chen sometime after 1960. He bases his conclusions on, among other things, the following facts:

a. A 1939 publication prepared by the EFEO, the French School of Far Eastern Studies, describes the Koh Ker site in detail. There are no references to looting in this publication, indicating that such looting did not take place until after 1939.

b. Pictures taken of the Koh Ker site and specifically, Prasat Chen, in the 1950s and 1960s show that the massive statuary located at the Koh Ker temples generally remained intact at that time.

c. After 1965, a new road was built through the Kulen mountain, making it easier to access the Prasat Chen site at Koh Ker, which is in a remote jungle location.

d. The first known sale in the art market of the Defendant in rem was in 1975, by an auction house based in the United Kingdom, to a private collector based in Belgium.

The Proposed Sale of the Defendant in Rem

16. The Defendant in rem remained in the collection of the private collector and his/her heirs (collectively, the "Private Collector"), in Belgium. In or about March 2010, Sotheby's engaged in discussions with the Private Collector about selling the Defendant in rem.

17. Sotheby's is one of the world's largest auction houses. Founded in London at the start of the 19<sup>th</sup> century, and now based in New York City, Sotheby's has offices around the world. Sotheby's has a particular expertise in art and artifacts from India and Southeast Asia. Among Sotheby's specialized departments is the Indian & Southeast Asian Department (the "SEA Department"), which offers works from India and South Asia, dating from the 1<sup>st</sup> century to modern, 21<sup>st</sup> century artists.

18. Sotheby's also has a Worldwide Compliance Department (the "Compliance Department"). The Compliance Department has primary responsibility for implementing Sotheby's policies on issues such as the international movement of works of art. The Compliance Department works closely with Sotheby's Worldwide Legal Department, which employs lawyers based in New York and London.

19. In its Proposal for Sale for the Defendant in rem (the "Proposal"), Sotheby's stated that it was "uniquely qualified to maximize the value of [the Defendant in rem]," and that Sotheby's has "unparalleled experience in the field of Indian and Southeast Asian Art." Sotheby's recognized the Defendant in rem as a "rare" work in the Proposal, and noted its "freshness to the market." Sotheby's stated in the Proposal:

We are pleased to present our proposal for the sale of your exceptional Khmer sculpture of a Devata figure. This magnificent sculpture evokes the spirit of ancient Cambodia and its vast and awe-inspiring temple structures, such as the renowned World Heritage site of Angkor Wat. The statue of a temple guardian is meant to convey power over malicious demons, thereby offering comfort for the devotees in their worship of the Hindu gods. And it does this with its commanding presence giving a sense of assurance and invincibility. An almost identical figure, now in the collections of the [ . ] Museum . . . allows one to conjure up a wonderful vision of the two statues together, perhaps lining an entrance way leading toward the dark temple interior and the sanctuaries of the gods. Your heroic statue epitomizes the extraordinary artistic achievement of the unknown sculptors of the Khmer empire.

Sotheby's further indicated in the Proposal that the Defendant in rem would be showcased at Sotheby's Asia Week reception, and that the statue would also be the subject of a scholarly lecture.

20. In or about late March 2010, the Private Collector entered into a consignment agreement (the "Consignment

Agreement") with Sotheby's under which the Private Collector consigned the Defendant in rem to Sotheby's for sale at auction. Under the terms of the Consignment Agreement, the Defendant in rem was to be offered for sale in Sotheby's Indian and Southeast Asian Works of Art Auction, to be held in New York, New York in September 2010.

21. After entering into the Consignment Agreement, Sotheby's made arrangements to import the Defendant in rem from Belgium to the United States. Prior to importing the Defendant in rem, Sotheby's obtained an invoice showing the sale of the Defendant in rem in 1975, by an auction house based in the United Kingdom, to the Private Collector. In this invoice, the Defendant in rem is described as "a highly important buff sandstone Guardian figure of heroic proportions." The invoice further states that the figure is "Khmer," is "Koh Ker style," and is from the 10<sup>th</sup> Century.

22. In or about late April 2010, Sotheby's imported the Defendant in rem into the United States in order to offer it for sale at auction. In the commercial invoice prepared in connection with the importation, the Defendant in rem is identified as a 10<sup>th</sup> Century "Khmer stone guardian" from Cambodia. The Defendant in rem arrived at JFK Airport on or about April 23, 2010.

23. On or about April 26, 2010, at the request of Sotheby's, the Private Collector executed an affidavit that was submitted to United States Customs and Border Protection stating, among other things, "[t]o the best of my knowledge, the [Defendant in rem] is not cultural property documented as appertaining to the inventory of a museum or religious or secular monument or similar institution in Cambodia." Sotheby's took possession of the Defendant in rem on or about the same day.

24. Sotheby's subsequently made arrangements to sell the Defendant in rem at auction. In connection with those arrangements, Sotheby's engaged in discussions with a scholar of Khmer art (the "Scholar") about retaining him/her to write the catalogue entry for the Defendant in rem and giving a lecture about the sculpture. On or about June 1, 2010, the Scholar informed an Officer in Sotheby's Indian and Southeast Asian Art section (the "Officer"), via email, about the Scholar's serious concerns about selling that Defendant in rem (referred to as the Dvarapala), given that it was stolen from Prasat Chen:

I have been doing a little catchup research on Koh Ker, and do not think that you should sell the Dvarapala at a public auction. The Cambodians in Phnom Penh now have clear evidence that it was definitely stolen from Prasat Chen at Koh Ker, as the feet are still

*in situ* (Read the attached report).<sup>2</sup> Please do not give this report to anyone outside of Sotheby, as I often have access to such material, and don't want to anger my sources. The two *Dvarapalas* must have stood close together and their feet remain, so it's pretty clear where they came from.

I think it would be hugely unwise to offer the *Dvarapala* publicly, and I would not really feel comfortable writing it up under the circumstances. It is also quite possible that the Cambodians might block the sale and ask for the piece back. Maybe the family that owns it . . . might want to offer it back to the National Museum of Cambodia as a gesture of good will and save everyone some embarrassment . . . I'm sorry as I had some exciting things to say about it, but I don't think Sotheby wants this kind of potential problem.

25. On or about June 14, 2010, the Officer asked the Scholar, via email, "Any further insights you can provide on the sensitivity surrounding the cultural property situation in Cambodia would be much appreciated." The Scholar responded via email the following day, "I just heard that seven pieces of Khmer art were being returned to Cambodia this week, so apparently the Koh Ker figure would attract attention if offered for sale with any publicity. Will see what I find out in Phnom [sic] Penh this week."

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<sup>2</sup> The report attached to the June 1, 2010 email is the report referenced in paragraph 10, above.

26. According to a June 25, 2010 email from the Officer to the Scholar, the Officer informed Sotheby's legal department about the issues raised in the Scholar's June 1, 2010 email. In a June 28, 2010 email from the Scholar to the Officer, the Scholar stated, in sum and substance, that he/she had believed that Sotheby's could go ahead and sell the Defendant *in rem* because it did not appear as if Cambodia, as a general practice, was requesting the return of looted Cambodian art and artifacts. The email stated, in relevant part:

Have finally recovered from jet-lag and here is what I found out in Phnom Penh from my culture spies and museum director . . . . Of course I did not ask the ex-museum director, [ ], who is now in the Ministry of Culture andthing [sic] specific about the Guardian figure that Sotheby is proposing to sell, but there are no plans at all for Cambodia or the National Museum of Cambodia in Phnom Penh to attempt to ask for the return of anything at the [ ] Museum or the [Museum] etc. They would also have to ask for all the Khmer material in the [Museum], and they want to continue to get French support etc.

I think that Sotheby can therefore go ahead and plan to sell the Koh Ker Guardian, but perhaps not good to show or mention the feet still *in situ* at Koh Ker in the catalogue. I would be happy to consider the lecture again under those circumstances. I think the major Cultural Property thrust in Cambodia now is to stop all current looting, and smuggling. US Customs recently found several Khmer pieces coming into the US, confiscated them, and returned them to Phnom Penh while I was there with great hoopla and religious blessings . . . I think it best that you know

all this, but think that legally and ethically you can happily sell the piece, and since it is probably the last chance to buy such a treasure, should get a very good price.

27. Sotheby's continued to make arrangements to sell the Defendant in rem at auction, and decided that it would sell the statue at a March 2011 auction, instead of a Fall 2010 auction. In preparation for that auction, Sotheby's continued to engage in discussions with the Scholar about preparing the catalogue entry for the Defendant in rem. During those discussions, Sotheby's and the Scholar talked about whether or not to inform the Cambodian Minister of Culture (the "Minister of Culture") about the upcoming sale. In an August 9, 2010 email, the Officer wrote to the Scholar, in relevant part:

Do you think you could work on your essay and complete it by the end of August? Our legal department has suggested that perhaps once you've completed the essay you would like to share it with [the Minister of Culture] purely for intellectual / art-historical exchange of views. This way he will be properly informed well in advance. . . . If he doesn't react adversely (within a time span of 7-10 days), then we will first celebrate and then immediately go ahead and prepare our museum packs and send out the packs to all the museums we have listed as targets.

28. The Scholar responded to the Officer in an email dated August 9, 2010. In the email, while stating his/her belief that the Defendant in rem could be legally sold, the Scholar told

Sotheby's, in sum and substance, that it would not be a good idea to share the Scholar's write-up on the piece with the Minister of Culture. He/she wrote:

There is NO WAY that I can send what I write to [the Minister of Culture]. If this is brought to his attention specifically, now that he is the Minister of Culture, he will be forced to do something, and might not make any decision for months. He has stated that Cambodia will not try to get back the [Museum] piece, even though the feet have been found at Koh Ker. Sending him the writeup specifically would be like waving a red flag in front of a bull.

29. In an email dated the same day from the Officer to him/herself, the Officer documented his/her conversation with the Scholar, in which the Scholar told the Officer the following:

- 1) [The Minister of Culture] is now a bureaucrat and acts like one. He is careful about what he says and what he discusses. This is why I am repeatedly telling you that we should not goad him into doing something.
- 2) Be prepared for bad press. You will get it no matter what you do as you're selling something so important. If you get bad press it will be from the US - from academics and 'temple huggers' not from Cambodians.
- 3) The current director of the National Museum in Cambodia is a person who is familiar with the finances of that institution and hasn't a clue about the art. [The Minister of Culture] has told me that Cambodia will not go after the [Museum] piece which was acquired the same time as yours. Just let sleeping dogs lie.

30. On or about November 8, 2010, Sotheby's wrote the Minister of Culture an email in which it stated that it was offering the Defendant in rem for sale:

I am writing to you about a Khmer masterpiece that Sotheby's is offering for sale in our March 2011 auction of Indian and Southeast Asian Art in New York. This monumental Koh Ker period sculpture of an Athlete is pair to a similar figure in the collection of the [ ] Museum. . . . Both sculptures were introduced into the auction market by [Auction House]... in the late 1960s/early 1970s, and were viewed by many curators, specialists, and collectors at the time. Our Athlete was eventually sold to a private European Collector in 1975 whilst the [Museum] acquired theirs in 1978/79.

31. Sotheby's did not receive a reply to their November 8, 2010 email to the Minister of Culture, and thus proceeded to sell the Defendant in rem. In a January 20, 2011 internal Sotheby's email, Sotheby's discussed the risks of offering the Defendant in rem for sale, and possible responses to any criticisms. The email reads, in part:

You no doubt know that we will be selling a sculpture in our New York Asian sales that is known to have come from a specific site in Cambodia and for which we only have provenance from 1975. It is our Asia week highlight and is estimated between \$2-3 million and is the cover lot of our catalogue. While questions may be raised about this, we feel we can defend our decision to sell it and if necessary, would make the points which are outlined below.

I am letting you know about this because it is possible that Art & Auction may use it on the cover, which we collectively think is worth the risk. We have until 2 PM to make a final decision and so we won't send it to them until then, in case you have a chance to express your view.

32. The Defendant in rem was on the cover and prominently featured in the catalogue for the March 2011 auction and the related marketing materials. The catalogue states, in pertinent part:

The splendid heroic figure is mate to the Koh Ker-style athlete at the Norton Simon Museum in Pasadena that is almost identical in posture and physical appearance . . . . The two figures were probably once shown in hand-to-hand combat, so would have originally faced each other, producing an ensemble similar to the wrestling contest between the two simian brothers in the *Reamker*, Valin and Sugriva, in the Phnom Penh Museum that was found in the entry tower (gopura) of Prasat Chen in the temple complex at Koh Ker, and not in a sanctuary intended for worship, according to Khmer art historian Hiram W. Woodward in a lecture given six years ago at the Norton Simon Museum. . . .

Koh Ker-period sculptures, named after the town in which they were discovered, are among the great masterpieces of Khmer art, unequaled by images from any other period in their portrayal of drama and potential action. This figure is enormously tactile and impressive, reflecting the prestige and the importance of the egotistical Khmer ruler who commissioned it, and the ultimate mastery of the Khmer artisans who produced it.

(citations omitted).

33. In a letter dated March 24, 2011, the Secretary General, Kingdom of Cambodia, informed the Director of Sotheby's that he believes the Defendant in rem was illegally removed from Prasat Chen. He requested that Sotheby's pull the Defendant in rem from the auction, and facilitate its return to the Kingdom of Cambodia. That letter stated, in pertinent part:

The Royal Government of Cambodia has been aware for a long time of the disappearance of the Bhima and Duryodhana statues from the PRASAT CHEN (Chen Temple) at the Historic and Archeological [sic] site of Koh Ker, Preah Vihear Province, Cambodia. . . .

The Royal Government has now been informed that the Duryodhana will be put up for sale at Sotheby's New York (see annex II). As the "pedestal" [sic] with the two feet, as illustrated in annex II, is still in situ at the PRASAT CHEN (Chen Temple) at Koh Ker site, it is believed that this statue was illegally removed from the site.

In view of the tremendous historical and archaeological value of the Duryodhana the Royal Government of Cambodia would like to take this opportunity to request Sotheby's to pull the object from sale and to facilitate its return to the Kingdom of Cambodia.

Sotheby's withdrew the Defendant in rem from the auction, but has retained, to date, possession of the Defendant in rem.

**IV. CULTURAL PROPERTY LAWS IN FRENCH INDOCHINA AND CAMBODIA:  
CAMBODIA'S OWNERSHIP OF THE DEFENDANT IN REM**

34. The Defendant in rem has been the property of Cambodia since at least 1900, if not earlier.

35. In ancient Cambodia, all land belonged exclusively to the crown and was inalienable, including the kingdom's archaeological sites and antiquities. This regime lasted into the early colonial period. An 1863 treaty first established Cambodia as a protectorate of France. In 1884, the concept of private property was introduced through a convention imposed by the French administration.

36. Also in 1884, a ruling by the French Governor responsible for Cambodia granted the state all territory formerly held by the crown. While this 1884 ruling made select lands "alienable," the "public domain" remained "inalienable," including those "structures [...] assigned to a public service."

37. Subsequently, a 1900 decree established a baseline level of protection for art and archaeology in French Indochina, including Cambodia, by explicitly recognizing that this art and archaeology, "above and below ground," were part of the "national domain." It also established a system of classifying certain moveable and immovable property, whose conservation was in the public interest from a historical or artistic perspective. Under the decree, once thus categorized, these moveables and immovableables received additional protections which, among other things, prohibited their unauthorized alteration, movement, sale, export, destruction, and even restoration. Furthermore, such

property was "inalienable" and "imprescriptible," under penalty of any sale's nullification. Subsequent legislation in 1913 and a decree issued in 1924 reaffirmed the protections set forth in the 1900 decree.

38. In or about 1925, the classification of French Indochina's objects and sites as historical monuments and objects began in earnest. In May of that year, a decree explicitly classified Koh Ker, including Prasat Chen and thus the Defendant in rem. A July 1925 decree, among other things, reiterated the earlier protections regarding classification and expanded upon them. The July 1925 decree also criminalized violations of the law related to historical monuments and objects.

39. On May 6, 1947, with independence on the horizon for Cambodia, the King of Cambodia signed a new constitution. In addition to laying the groundwork for the modern Cambodian state, this charter provided that existing laws "not inconsistent" with its terms "shall remain in force," until replaced by new ones or otherwise repealed. In a 1950 convention, France transferred the power to protect, classify, and conserve historic monuments to the Royal Government of Cambodia. Cambodia formally declared and was granted independence in 1953.

40. In the 1960's, Cambodia joined other states in calling for an international agreement to regulate the looting of

archaeological sites and the subsequent trafficking in antiquities. Most of the supporters for such a treaty were former European colonies in Asia and Africa which, like Cambodia, feared that these activities were chipping away at their very national identities. Their efforts culminated in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.

41. A year later, a coup in Cambodia led to a civil war with the Khmer Rouge. In September 1972, Cambodia became only the seventh state to ratify the UNESCO Convention, even though by then it controlled little more than the Phnom Penh and Angkor regions. Just a few months earlier, Cambodia had also imposed a new constitution, which established the short-lived Khmer Republic. Like its 1947 predecessor, this document contained a provision that preserved the previous government's institutions, until a new framework could be implemented. In 1975, the Khmer Republic fell to the Khmer Rouge. The Khmer Rouge remained in power until 1979.

V. CLAIMS FOR FORFEITURE

42. Incorporated herein are the allegations contained in paragraphs 1 through 41 of the verified complaint.

43. 18 U.S.C. § 545 provides in pertinent part that "[w]hoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law," shall be subject to criminal penalties. 18 U.S.C. § 545 further provides in pertinent part that "[m]erchandise introduced into the United States in violation of this section...shall be forfeited to the United States."

44. 18 U.S.C. § 2314 provides in pertinent part that "[w]hoever transports, transmits, or transfers in interstate or foreign commerce any goods, wares, merchandise, securities or money, the value of \$5,000 or more, knowing the same to have been stolen, converted or taken by fraud," shall be subject to criminal penalties.

45. 18 U.S.C. § 2315 provides in pertinent part that "[w]hoever receives, possesses, conceals, stores, barters, sells, or disposes of any goods, wares, or merchandise, securities, or money of the value of \$5,000 or more . . . which have crossed a State or United States boundary after being stolen, unlawfully converted, or taken, knowing the same to have been stolen,

unlawfully converted, or taken," shall be subject to criminal penalties.

46. 19 U.S.C. § 1595a(c) provides in pertinent part:

Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:

(1) The merchandise shall be seized and forfeited if it - (A) is stolen, smuggled, or clandestinely imported or introduced...

47. Pursuant to 18 U.S.C. § 981(a)(1)(C), "any property, real or personal, which constitutes or is derived from proceeds traceable," to a violation of 18 U.S.C. § 2314 or 18 U.S.C. § 2315 is subject to forfeiture to the United States.

48. The Defendant in rem is subject to forfeiture pursuant to 19 U.S.C. § 1595a(c) because there is probable cause to believe that the Defendant in rem is stolen property introduced into the United States contrary to law, in that Sotheby's transported, transmitted, or transferred in interstate or foreign commerce the Defendant in rem, knowing the same to have been stolen, converted, or taken by fraud.

49. The Defendant in rem is subject to forfeiture pursuant to 18 U.S.C. § 545 because there is probable cause to believe that the Defendant in rem is merchandise which was introduced into the United States in violation of that section, in that Sotheby's knowingly imported the Defendant in rem into

the United States knowing that it had been stolen, converted, or taken by fraud, and/or that Sotheby's received, concealed, bought, sold or in any manner facilitated the transportation, concealment, or sale of the Defendant in rem, knowing the same to have been imported or brought into the United States contrary to law..

50. The Defendant in rem is further subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) because there is probable cause to believe that the Defendant in rem is property, real or personal, which constitutes or is derived from a violation of 18 U.S.C. § 2314 and/or 18 U.S.C. § 2315.

Dated: New York, New York  
April 4, 2012

PREET BHARARA  
United States Attorney for  
the Southern District of New York  
Attorney for the Plaintiff  
United States of America

By: 

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VERIFICATION

STATE OF NEW YORK )  
COUNTY OF NEW YORK :  
SOUTHERN DISTRICT OF NEW YORK )

BRENTON EASTER, being duly sworn, deposes and says that he is a Special Agent with the Department of Homeland Security, Homeland Security Investigations ("HSI") and as such has responsibility for the within action; that he has read the foregoing complaint and knows the contents thereof; and that the same is true to the best of his own knowledge, information and belief.

The sources of deponent's information and the ground of his belief are official records and files of the HSI, and other law enforcement agencies, and information and documents obtained and/or reviewed by deponent during an investigation of alleged violations of 18 U.S.C. §§ 545, 2314, and 2315, and 19 U.S.C. § 1595a(c), among other statutes.

B. L. E.  
BRENTON EASTER  
Special agent  
Homeland Security Investigations

Sworn to before me this  
4th day of April, 2012

W. O. J.  
\_\_\_\_\_  
NOTARY PUBLIC

MARCO DASILVA  
Notary Public, State of New York  
No. 01DA6145603  
Qualified in Nassau County  
My Commission Expires May 8, 2014

# Exhibit

# A

